IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 6484 of 1999

Between:

M/s. Durga Wine Industries h.No.9/165, Nabikot, Cuddapah,
Mr. S. Srinivauslu, Partner, Factory: no.180 & 181,
4th Road, Jawahar Auto Nagar, Vijayawada

..... PETITIONER

AND

1 The Commercial Tax Officer-I
Smit Road, Near Z.P. Office,
Cuddapah-516001
2 The Managing Director M/s. A.P.Beverages Corporation Ltd.,
5-10-174, II & III Floors, N.S.F.Building,
Shankar Bhavan, Fathe Maidan Road, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or order or direction, declaring the action of the 1st respondent in issuing notice dated 23-3-1999 under Section 17 of the APGST Act to the 2nd Respondent for recovery of alleged arrears of tax of M/s. Sri Radha Krishna Wine Distributors, who is a third party, from out of Petitioner's funds available with the 2nd respondent and the consequential action of the 2nd Respondent in issuing a cheque dated 25-3-1999 for Rs.9,17,731/- drawn on State Bank of Hyderabad, Adarshnagar Branch, Hyderabad in favour of the 1st respondent as arbitrary high handed and contrary to law and consequently direct the 1st respondent not to encash the said cheque and if already encashed to refund the said amount of Rs.9,17,731/- to the Petitioner with interest

Counsel for the Petitioner: MR.P.SRINIVAS REDDY
Counsel for the Respondents: Spl. GP FOR TAXES

The Court made the following :

HON'BLE MR. JUSTICE BILAL NAZKI

AND

HON'BLE MR. JUSTICE S. ANANDA REDDY

W.P.NO. 6484 OF 1999

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

Heard learned counsel for the parties. A notice under Section 17 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") is challenged in this writ petition.

The petitioner contends that it is a firm engaged in manufacturing and trading of liquor having its office at Cuddapah and factory at Vijayawada. A notice dt. 8.3.199 under Section 17 of the Act was served on the 2nd respondent asking him to pay an amount of Rs.17,08,764/- from out of the amounts due to the petitioner towards alleged arrears of sales tax due from an independent third party M/s. Sri Radha Kirshna Wine Distributors, Cuddapah. The petitioner filed a writ petition being WP No. 5435 of 1999 contending that he was not responsible for the alleged arrears of another proprietary concern since the petitioner was an independent partnership firm. This Court disposed of the writ petition by order dt. 17.3.1999 directing the 1st respondent to reconcile the payments made by the third party and thereafter pass a speaking order and maintain status quo till then. On 17.3.1999 2nd respondent issued a

cheque for Rs.13,03,960/- in favour of 1st respondent towards sale tax arrears of third party. The cheque was returned to the 2nd respondent and the 1st respondent issued a fresh notice under Section 17 of the Act on 23.3.1999 requesting the 2nd respondent to issue a cheque for Rs.9,17,731/-. Eventually in response to the notice dt. 23.3.1999 the 2nd respondent issued a cheque for Rs.9,17,731/- and the present writ petition was filed with a prayer that the 1st respondent should not encash the said cheque. However, during the pendency of these proceedings, this cheque was encashed.

The only question that has to be answered in this case is whether a notice under Section 17 of the Act could have been issued to the 2nd respondent ordering payment of the amounts which were due to the petitioner on account of default of a third party M/s. Sri Radha Krishna Wine Distributors, Cuddapah towards sales tax. Section 17 of the APGST Act lays down,

"17. Recovery of tax and other dues payable under the Act from persons from whom money is due to the dealer: (1) The assessing authority, may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any person from whom money is due or may become due to the dealer, or any person who holds or may subsequently hold money for, or on account of the dealer, to pay to the assessing authority either forthwith if the money has become due or is so held, or within the time specified in he notice (but not before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by the dealer in respect of (arrears of tax, interest, penalty or fee) or the whole of the money when it is equal to or less than that amount."

Before Section 17 of the Act is applied, it is imperative on the Tax Authorities to ascertain whether any amounts belonging to a defaulter are due or are likely to become due from the person to

whom a notice under Section 17 of the Act is given. In the present case there is no finding in the impugned order with regard to the satisfaction that any amount was due from the 2nd respondent to the petitioner. The amount was due from a third party. The only connection between the petitioner and the third party was that the third party was a partner in the petitioner's firm. As a partner of the petitioner's firm what was the amount due to him from the 2nd respondent was at no point of time ascertained and as a matter of fact in a partnership concern it will also not be possible to ascertain the amounts due to him individually from the 2nd respondent. Such a question has already been considered by the Supreme Court in *K. Srihari Rao & Co., Vs. Deputy Commercial Tax Officer, Sirpur Kagaznagar and another* . Following the same judgment, we are of the view that the sales tax authorities could have not issued the impugned notice and ordered attachment and payment of money that was due to the petitioner on account of the default of a third party.

In these circumstances, we allow the writ petition, quash the impugned notice and direct the 1st respondent to refund the amount to the petitioner within six weeks from the date of receipt of a copy of this order. The respondents are at liberty to recover the dues from the defaulting dealer in accordance with law. No costs.

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BN J.

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SAR J.

Dt.13.10.2004

KR

That the Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, Chief Justice, on this Wednesday, the Thirteenth day of October, Two Thousand and Four.

Sd/-

ASST.REGISTRAR

//True copy//

Section Officer

To

1 The Commercial Tax Officer-I
Smit Road, Near Z.P. Office,
Cuddapah-516001
2 The Managing Director M/s. A.P.Beverages Corporation Ltd.,
5-10-174, II & III Floors, N.S.F.Building,
Shankar Bhavan, Fathe Maidan Road, Hyderabad

3. 2 CCs to Spl. G.P. for Taxes, High Court Buildings, Hyderabad (out)

4. 2CD copies